

## MINUTES

### MILWAUKIE CITY COUNCIL OCTOBER 7, 2003

#### CALL TO ORDER

Mayor Bernard called the 1919<sup>th</sup> meeting of the Milwaukie City Council to order at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Councilor Deborah Barnes  
Councilor Larry Lancaster

Councilor Joe Loomis  
Councilor Susan Stone

Staff present:

Mike Swanson,  
City Manager  
Dom Colletta,  
City Attorney  
Paul Shirey,  
Engineering Director

Tom Larsen,  
Building Inspector  
Brion Barnett,  
Civil Engineer

#### PLEDGE OF ALLEGIANCE

#### PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

**Mayor Bernard** read a proclamation recognizing October 8, 2003 as *Walk a Child to School Day* and invited residents to meet at Lisac's on 32<sup>nd</sup> Avenue at 7:30 a.m. to walk Ardenwald Elementary students to school.

**Mayor Bernard** acknowledged Sharon and Sonny Phillips for their community work. Sharon has served as a member of the Center/Community Advisory Board since January 2002. The Phillips's interest in Milwaukie history resulted in their sponsoring the outdoor flicks at Waldorf School this summer and organizing numerous cable access events with State Representative Carolyn Tomei and Richard Beck in which long-time Milwaukie residents shared their reminiscences. He announced the Share the Memories event on Saturday, October 18 at City Hall from 1 p.m. to 4 p.m.

#### Historic Moments

**Mayor Bernard** read several Milwaukie newspaper headlines from 1959. Construction began on the Oak Grove Fred Meyer, Dieringer's King Road Shopping Center had its grand opening, Dr. Thomas Remly, Milwaukie physician since 1920, died, Massachusetts Senator John F. Kennedy made a stop at Perry's Pharmacy on his presidential campaign tour, the first pace-maker in the western United States was implanted in Wichita area resident John Scaife, and the first walls of the Rose Villa

Retirement Community were erected. Milwaukie Museum Curator Madalaine Bohl is preparing this series of historical notes in honor of the City's Centennial Year.

**Mayor Bernard** introduced Scout Adam Ortiz with whom he participated in a recent Pinewood Derby event.

**Mayor Bernard** read a proclamation recognizing October as *Disability Awareness Month* in the City of Milwaukie.

**AUDIENCE PARTICIPATION** -- None

## **CONSENT AGENDA**

It was moved by Councilor Stone and seconded by Councilor Barnes to approve the Consent Agenda that consisted of:

- A. City Council Minutes of September 2, 15 and 16, 2003;
- B. **Resolution No. 41-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Assessing the Costs of Abatement of the Nuisance Located at 4201 SE Meadowcrest and Entering the Same on the Docket of City Liens Pursuant to Milwaukie Municipal Code Section 8.04.200(D);**
- C. **Resolution No. 42-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Assessing the Costs of Abatement of the Nuisance Located at 12106 SE 21<sup>st</sup> and SE Bobwhite and Entering the Same on the Docket of City Liens Pursuant to Milwaukie Municipal Code Section 8.04.200(D); and**
- D. O.L.C.C. Application for Libbies Too, 11094 SE Main Street.

Motion passed unanimously.

**PUBLIC HEARING** – None scheduled

## **OTHER BUSINESS**

### **Electric Lightwave, LLC Franchise Agreement**

**Program Administrator JoAnn Herrigel** presented the staff report. She requested the City Council approve an ordinance granting a 10-year nonexclusive franchise to Electric Lightwave, Inc. (ELI) to operate as a telecommunications provider within the City of Milwaukie. She noted several non-substantive changes to the document in the staff report.

ELI is a subsidiary of Citizens Utilities Company, which provides services in 500 communities and 14 states. It offers digital transmission services to banks, government agencies, hospitals, and other large companies. In Milwaukie she believes ELI provides

services to Providence Milwaukie Hospital. ELI both leases infrastructure from Qwest and has some of its own. It has operated in the Portland area since about 1990.

The proposed franchise has a ten-year term that would expire on October 31, 2013. ELI will pay a minimum franchise fee of \$1,000 per quarter or 5% of the gross revenue whichever is greater. There is also a requirement for a \$25,000 bond. Section 20 – Reservation of Rights allows the City to receive franchise fees from ELI pending the outcome of legal cases with the City of Portland. It further states the City of Milwaukie agrees to negotiate rather than litigate once the cases are settled.

**Councilor Stone** asked if a ten-year franchise was common.

**Herrigel** said other current City franchise agreements are for ten or more years. Under these conditions, the City does not have to negotiate too often, and the companies have an assurance they will operate within the City for that period of time.

**Councilor Lancaster** asked if, because of the provision of the \$1,000 per quarter or 5% of gross revenues, it would be advantageous to the City to have a longer term.

**Herrigel** said ten years is consistent with the City's other franchise agreements. The City may not wish to seek a longer term because of potential changes in technology, policy, or regulations.

**Councilor Lancaster** asked if there might be any circumstances that could trigger a desire to renegotiate.

**Herrigel** said there could be such a circumstance but did not have any examples at this time.

**Councilor Lancaster** said there might be a benefit to both parties if adjustments could be made within the framework.

**City Attorney Dom Colletta** said it might be possible to negotiate such items into the contract; however, a renegotiation clause could cut both ways and should be considered carefully before being adopted. It might also result in having to negotiate a number of the elements of the contract that have already been negotiated. While it is possible to do that, it is not necessarily advisable from a legal standpoint because of the inability to predict what might occur.

**Councilor Barnes** understands ELI is a voice and data company and asked for names of similar types of companies.

**Dan Norfleet**, ELI representative, explained, "competitive local exchange carrier" is another term to describe this type of company. The 1996 Telecommunications Act allowed start up companies to compete with incumbent local exchange carriers such as

Qwest. ELI is comparable to Qwest and Integra. ELI is facilities based and uses existing fiber optics where available, but it also has its own facilities in the ground.

**Councilor Barnes** asked if people in Milwaukie could change their phone service.

**Norfleet** said ELI primarily serves businesses, hospitals, and government agencies not residential.

It was moved by Mayor Bernard and seconded by Councilor Barnes for the first and second reading by title only and for adoption of an ordinance granting a nonexclusive franchise for ten years to Electric Lightwave, LLC and authorizing the city manager to sign an agreement. Motion passed unanimously. The City Manager read the ordinance twice by title only.

The City Recorder polled the Council: Mayor Bernard, Councilor Barnes, Councilor Lancaster, Councilor Loomis, Councilor Barnes aye; no nays; no abstentions.

**ORDINANCE NO. 1926:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, GRANTING ELECTRIC LIGHTWAVE, LLC. A NONEXCLUSIVE FRANCHISE FOR TEN YEARS TO OPERATE AS A TELECOMMUNICATIONS PROVIDER WITHIN THE CITY OF MILWAUKIE AND AUTHORIZING THE CITY MANAGER TO SIGN A FRANCHISE AGREEMENT WITH ELECTRIC LIGHTWAVE, LLC IN SUBSTANTIALLY THE FORM OF EXHIBIT A.**

**Intergovernmental Agreement Allowing Temporary or Long-Term Sharing of Building Inspection Staff with Other Jurisdictions in the Tri-Counties Area – Resolution**

**Building Inspector Tom Larsen** presented the staff report. The proposal was a result of 23 jurisdictions in Clackamas, Washington, and Multnomah Counties working together to find a way to maintain staffing levels during the peaks and valleys of construction activity. The concept is to develop a standard form agreement that city managers could sign once adopted by the Council in each jurisdiction. Larsen envisioned Milwaukie's having agreements with 5 or 6 jurisdictions that would share resources on an as-needed basis. It is up to the "originating party" whether that jurisdiction would provide help to the "borrowing party." If, for example, Milwaukie contracts with a third party provider, that provider would expect to work full time for about \$500 per day. Under the proposed intergovernmental agreement, inspectors could be called in as needed and be paid on an hourly basis. Larsen has a tentative agreement with the City of Troutdale that a bank of hours would be built up and services would be reciprocated.

**Mayor Bernard** commented that Larsen was hired because of customer service concerns with the previous inspector. He would hope the City would not contract with that jurisdiction.

**Swanson** said customer service was one of the big issues when Milwaukie decided to do its own inspections. Adequate coverage during times the inspector is out of the office was also an issue of some concern. This is a problem many jurisdictions face, so several collaborated on this unique proposal. He noted complaints about inspection issues have dropped off sharply since Larsen was hired. There will always be peaks and valleys in the construction industry, and Swanson believes this is a good approach to taking care of coverage issues. For example, Larsen may need help when the King Road Safeway project begins, and another jurisdiction may be in a valley and able to lend some support.

**Councilor Lancaster** followed up on the customer service element of inspection services and asked if there could be verbiage that identifies Milwaukie's service standards.

**Swanson** said one of Larsen's strengths is his customer service ethic, so he feels assured these standards will be communicated. Milwaukie will not sign any agreements with the previous inspector since it is unlikely he will meet the City's expectations.

**Larsen** knows people from the other jurisdictions, and he would not anticipate any problems. Inspections are a small part of the building inspector's job. A big part of his job is plan reviews and simply communicating with people. He would not authorize others to make important building official decisions.

**Councilor Lancaster** experienced Larsen's service, and he was very happy with it. Based on Larsen's customer service standards, he suggested setting up a hierarchy call list so there will always be a good group of people from which to choose. He asked Larsen if he saw a problem in having a pool to provide a seamless level of service.

**Larsen** said this program is a work in progress. The time has come to do something like this, and it could prove to be very valuable over the next few years. It is up to the jurisdictions if they wish to participate in the program. Swanson, on behalf of the City of Milwaukie, will have the authority to sign, or not sign, agreements coming before him.

**Councilor Stone** understood there would be no exchange of money in this program and will be more like a barter system. What would Milwaukie do if it were not able to give back the hours someone from another jurisdiction worked?

**Larsen** said the reciprocal agreement he talked about was specific to Troutdale, and it is not set in stone. He and the Troutdale building official agreed on a threshold of hours, but other jurisdictions would probably be on a monetary basis.

**Councilor Stone** asked if all the jurisdictions would be charging the same hourly fees and what would those fees be?

**Larsen** said the fee would be based on hourly wages and benefits, so there would be some differences between jurisdictions and possibly inspectors. The idea is not to make a profit but to cover expenses.

It was moved by **Mayor Bernard** and seconded by **Councilor Loomis** to adopt the resolution authorizing the city manager to sign intergovernmental agreements to share building inspection staff with other jurisdictions in the tri-county area. Motion passed unanimously.

**RESOLUTION NO. 43-2003:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS WITH OTHER JURISDICTIONS IN THE TRI-COUNTIES AREA, FOR THE SHORT OR LONG TERM SHARING OF BUILDING INSPECTION STAFF ON AN AS-NEEDED BASIS.**

**McLoughlin Boulevard Improvements Project, Intergovernmental Agreement for Right-of-Way Acquisition -- Resolution**

**Engineering Director Paul Shirey** presented the staff report. He asked the City Council to approve two actions. One was an intergovernmental agreement with the state to negotiate acquisition of right-of-way to build improvements. The second action was to authorize the Oregon Department of Transportation (ODOT) to use the power of eminent domain to acquire the needed properties.

The scope of the project includes widening the road about 20 feet to the west. Two properties, Vic's Tavern and the Antique Mall, will be impacted, and the businesses will have to be relocated. Additional easements and increased curb radii will be needed on the east side, and there are potential impacts to driveway locations. Staff recommends ODOT be retained for the purpose of acquiring right-of-way because of the complexities in addition to the fact that McLoughlin Boulevard is under ODOT jurisdiction. Those property and business owners potentially impacted by the project have been contacted, and they are anxious to begin discussions and proceed. None of the affected parties attended the Council meeting. Although no one wishes to resort to eminent domain, Shirey recommended having the resolution for condemnation if it becomes necessary.

The preliminary design process has just begun and moves through final engineering and construction. It is a deliberative process that includes stakeholders such as business and property owners; downtown, neighborhood, riverfront, and boating interests; and the sewage treatment plant operators. The design will be further refined to determine precisely what additional property needs to be acquired. Staff will

introduce the project team and discuss the improvements in more detail on November 3. There will be Council updates at the 30% and 70% design stages.

**Mayor Bernard** has spoken with several business owners, and one indicated he had not been contacted. Staff, however, says this person has been contacted two or three times. He understands the Antique Mall owner would like to relocate. He asked if ODOT could simply condemn?

**Colletta** said ODOT does have power of condemnation but would be reluctant in this type of interjurisdictional project.

**Councilor Lancaster** understands this is a \$1.9 million project, and the City only has to come up with 10%.

**Shirey** said the first \$1.9 million is from one source of money, and \$2 million comes from another. The combined resources available to do the project are \$4.1 million. The City has a match requirement.

**Councilor Lancaster** understands the monies are coming out of the street fund.

**Shirey** said that is correct, and funds have been budgeted for the match.

**Swanson** believes general fund money is being transferred into the street fund, and these transfers have gone through the budget process.

**Councilor Barnes** referred to the staff report section on fiscal impact. The City budgeted \$60,000 from the general fund to cover this one-time cost. She asked Shirey to explain further.

**Shirey** said those portions of the properties including the buildings required to construct the roadway are considered by the federal government and ODOT to be participating costs. Federal funds are used for those costs, and the City is responsible for a 10% match. It is the City's responsibility to fund the purchase of the underlying land that is not in right-of-way. This is considered a non-participating expense.

**Councilor Barnes** asked who pays Vic's and the Antique Mall for the building.

**Shirey** explained participating expense are the building costs, that portion of the underlying land that will become right-of-way, and relocation expenses.

**Councilor Barnes** asked how much money would have to be offered because she does not want to go through the condemnation process.

**Shirey** said the piece Milwaukie would have to pay is for the land that is not in the right-of-way. The City's budget is \$90,000.

**Councilor Stone** asked, in terms of negotiating the costs, what is the typical timeframe before going to condemnation?

**Shirey** replied federal government has a time frame that includes an appraisal procedure and property owner response time.

**Councilor Stone** agreed with Barnes and does not wish to go down the road of condemning those properties. She asked what would be the impacts if the Council does not adopt the resolution at this meeting. If it came to condemnation, when would that effective date be?

**Colletta** responded it would require adoption of a resolution of necessity by the Council. He is not certain of the timeframes, but after adoption of the resolution of necessity, typically an appraisal is performed and delivered to the property owner for review. This is done in conjunction with an offer to purchase supported by the appraisal. There is a period of time for negotiation. Realistically, he believes there would be about 120 days before litigation were initiated.

**Councilor Stone** understands that scenario would play out if the resolution was not passed at this meeting and could just be kept in the City's back pocket if needed. She wishes to avoid going down that road. Would the property have to be reappraised if negotiations failed?

**Colletta** said it depends on the amount of time that has gone by. The appraisal would remain good if it were done, for example, in the last six months. The resolution, as he reads it, declares these properties are necessary and is the first step in the condemnation process.

**Shirey** said the appraisals have not started because the agreement with ODOT to act as the City's agent has not been signed. There is 120-day letter if efforts fail and legal action needs to be taken. The state has a program to resolve cases where there is no agreement. Under the law, if there is no agreement, the state can deposit the appraisal value with the court for the property in question. Construction can proceed, and during that period of time, the state works very hard to come to an agreement and avoid moving to condemnation. The losing party must pay the prevailing party's legal expenses, so it is not unusual to see these cases settled before going to court because of the risk involved.

**Councilor Stone** asked if it is his sense ODOT may not agree to be the City's agent if the resolution is not passed at this meeting.

**Shirey** did not now, but it is common practice for this type of resolution to accompany the agreement to start the process.

**Colletta** added that it usually makes the negotiation process much more effective when there is some recognition that action will be taken if negotiations are not successful.



**Mayor Bernard** commented this project definitely needs to be done, and access to the riverfront must be improved. On the west side of McLoughlin Boulevard there are only two privately-owned properties. On the east side there are numerous properties and many businesses would have to be closed. He believes this is the best way to go. A lot of City property is being offered up for this project. Condemnation is not something any jurisdiction desires, but sometimes it is necessary.

**Councilor Loomis** understands the City is responsible for hazardous material clean up and asked how the City would pay for that if clean up is required.

**Shirey** explained that is standard language in that the state requires cleanup before it accepts the property as right-of-way. To his knowledge there have been no past practices that would have contaminated those sites.

**Councilor Loomis** asked if the occupants of the two subject buildings were also the property owners.

**Swanson** understands Vic's Tavern is a lessee, but he is not sure about the Antique Mall.

**Councilor Loomis** asked if business owners are compensated.

**Shirey** said there is a compensation package for the business and noted this project has been in progress for several years.

**Mayor Bernard** pointed out no business or property owners were present at this meeting.

**It was moved by Councilor Lancaster and seconded by Councilor Stone to authorize the Mayor to sign an intergovernmental agreement with ODOT for right-of-way services. Motion passed unanimously.**

**It was moved by Mayor Bernard and seconded by Councilor Stone to adopt the resolution declaring the need to acquire property for right-of-way. Motion passed unanimously.**

**RESOLUTION NO. 44-2003:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DECLARING THE NEED TO ACQUIRE PROPERTY FOR RIGHT-OF-WAY.**

**Other**

**Councilor Loomis** thanked Planning Director John Gessner for clarifying issues at recent stakeholder meetings regarding downtown development and the riverfront. The welfare of the community needs to be considered in these projects.

A member of the audience had questions regarding property owners on the east side of McLoughlin Boulevard, and Mayor Bernard indicated Shirey and Barnett would be available to answer questions after the meeting.

**Councilor Loomis** serves on the Milwaukie High School Advisory Board and recently met with the principal and some citizens. There are a lot of good things going on in the high school just as there are in the City, and he looks forward to building a good relationship with the high school.

**Mayor Bernard** said staff consistently tells developers to work with the neighborhoods and then work with Council and staff. Ed Zumwalt, for example, worked closely with ODS on its renovation project.

**Councilor Loomis** thanked staff for looking after its citizens when consultants share their ideas with the community.

**Councilor Barnes** attended the Police Officer of the Year Banquet and congratulated Officer Kevin Krebs on his accomplishments. She wished him well in the state and national competition.

**Mayor Bernard** announced the City Council would meet in executive session immediately following adjournment of the regular session to discuss real property transactions to ORS 192.660 (h).

**ADJOURNMENT**

**It was moved by Councilor Stone and seconded by Councilor Lancaster to adjourn the meeting. Motion passed unanimously.**

**Mayor Bernard** adjourned the regular session at 7:03 p.m.

  
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Pat DuVal, Recorder